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MINNESOTA'S SEAT BELT EVIDENCE GAG RULE: ANTIQUATED AND UNFAIR IN CRASHWORTHINESS CASES

JANICE K. O'GRADY†

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INTRODUCTION

Since the early 1960s, when the first laws were enacted requiring installation of seat belts in automobiles, courts and legislatures across the country have struggled with the issue of what effect failure to wear a seat belt should have upon an injured person's right to recovery in a civil lawsuit arising from an automobile accident. In lawsuits against other drivers, statutes and case law have taken a variety of approaches. These range from totally banning evidence relating to seat belts to allowing failure to wear a seat belt to be a comparative negligence factor or a defense to reduce a plaintiff's damages.

Minnesota Statutes section 169.685 was first enacted in 1963. It requires that, after January 1, 1964, all new motor vehicles be equipped with seat belts in the front seat. The statute as enacted in 1963 did not require the use of seat belts. In fact, subdivision 4 of the statute, hereinafter referred to as the "seat belt evidence gag rule," provided that proof of the failure to use seat belts would be inadmissible in litigation arising from the operation of a motor vehicle. In 1981, section 169.685 was amended to require parents to equip their vehicles with child passenger restraint systems, and subdivision 4 was amended accordingly. That has been the only amendment to that section since 1963. Minnesota Statutes section 169.685, subdivision 4, currently provides as follows:

Proof of the use or failure to use seat belts or a child passenger restraint system as described in subd. 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subd. 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

The adoption of the seat belt evidence gag rule paralleled the legislature's choice in 1963 not to require the use of seat belts. The legislature's refusal to establish a statutory duty to wear a seat belt is consistent with the legislature's refusal to penalize individuals in civil litigation for failure to wear a seat belt.

Since the adoption of section 169.685, subdivision 4, the legislature has never looked at the seat belt evidence gag rule in relation to changes in the law or public policy which have

occurred during this period. These changes include the adoption of comparative fault, the emergence of the crashworthiness doctrine, and the growing recognition of the effectiveness of seat belts in preventing injuries. The lack of guidance in the statutory language and legislative history as to whether the seat belt evidence gag rule should apply in crashworthiness cases makes this question ripe for judicial determination.

In 1968, the United States Eighth Circuit Court of Appeals led the nation by adopting the "crashworthiness" or "second collision" doctrine in the case of *Larsen v. General Motors Corp.*¹ The crashworthiness doctrine imposes a duty on automobile manufacturers to foresee the occurrence of accidents and to produce automobiles that are able to diminish or prevent injuries resulting from the "second collision" of the passenger with the interior of the vehicle.² Since *Larsen*, thirty-seven states have now specifically adopted the doctrine, and there are no longer any states refusing to recognize the doctrine.³

National awareness regarding the use of seat belts had barely begun to develop at the time of the *Larsen* decision and has only developed slowly during the long period of time thereafter.⁴ In the early 1980s, however, the value placed upon seat belt use by passengers has greatly increased, as reflected in the current trend to mandate seat belt use.⁵

Most courts, including Minnesota's, have yet to face the issue of whether the failure to wear a seat belt should be admissible as evidence in a crashworthiness case. Of the nine state courts that have specifically faced the issue, all have held that evidence of seat belt nonuse is admissible in crashworthiness cases, even where there was prior case or statutory law precluding the seat belt defense in non-crashworthiness cases.⁶

1. 391 F.2d 495 (8th Cir. 1968).

2. See *id.* at 502.

3. The thirty-seven states which have expressly adopted the crashworthiness doctrine are as follows: Alabama; Arizona; California; Colorado; Connecticut; Florida; Georgia; Idaho; Illinois; Indiana; Iowa; Kentucky; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; New Jersey; New Mexico; New York; North Dakota; Ohio; Oklahoma; Oregon; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Virginia; Washington; Wisconsin; and Wyoming.

4. See Werber, *A Multi-Disciplinary Approach To Seat Belt Issues*, 29 CLEV. ST. L. REV. 217, 220 (1980).

5. See the Seat Belt Chart appearing at the end of this article.

6. The nine states which have faced the issue of admissibility of failure to wear a seat belt in a crashworthiness case have done so in the following cases: *Wilson v.*

Clearly a trend toward the admissibility of such evidence has begun.

This article analyzes the history and current status of legislative and common law treatment of seat belt evidence in crashworthiness cases on a national level. It then focuses on the Minnesota seat belt law and the reasons evidence of seat belt nonuse should be admissible in crashworthiness cases in Minnesota.

I. THE NATIONAL TREND IS TOWARD ADMISSION OF SEAT BELT EVIDENCE IN CRASHWORTHINESS CASES

In non-crashworthiness cases, courts across the country have taken widely divergent positions on the admissibility and effect of evidence of failure to wear seat belts. Some jurisdictions have held that evidence of failure to wear seat belts is completely inadmissible.⁷ Some jurisdictions have held that evidence of failure to wear a seat belt is inadmissible to prove negligence on the part of an injured plaintiff, but is admissible on the issue of mitigation of a plaintiff's damages.⁸ A minority of jurisdictions have held that failure to wear a seat belt can constitute contributory negligence.⁹

Wisconsin courts have long accepted the seat belt defense in

Volkswagen of America, Inc., 445 F. Supp. 1368 (E.D. Va. 1978); *Daly v. General Motors Corp.*, 20 Cal. 3d 725, 575 P.2d 1162, 144 Cal. Rptr. 380 (1978); *Volkswagen v. Long*, 476 So. 2d 267 (Fla. 1985); *Seward v. Griffin*, 116 Ill. App. 3d 749, 452 N.W.2d 558 (1983); *McElroy v. Allstate Ins. Co.*, 420 So. 2d 214 (La. Ct. App. 1982); *Lowe v. Estate Motors Ltd.*, 428 Mich. 439, 410 N.W.2d 706 (1987); *Siren v. Behan*, 224 N.J. Super. 130, 539 A.2d 1244 (1988); *Dahl v. BMW*, 304 Or. 558, 748 P.2d 77 (1987); *Foley v. City of West Allis*, 113 Wis. 2d 475, 335 N.W.2d 824 (1983).

7. *See, e.g.*, *Sours v. General Motors Corp.*, 717 F.2d 1511 (6th Cir. 1983) (in an automobile rollover case where plaintiff's theory was based on defective roof, it was harmless error to exclude evidence of nonuse of seat belt); *Vizzini v. Ford Motor Co.*, 569 F.2d 754 (3d Cir. 1977) (exclusion of evidence of non-usage of seat belts was proper); *Churning v. Staples*, 628 P.2d 180 (Colo. Ct. App. 1981) (the seat belt defense was not available for purposes of determining the degree of plaintiff's negligence under the comparative negligence statute); *Taplin v. Clark*, 6 Kan. App. 2d 66, 626 P.2d 1198 (1981) (evidence of nonuse is inadmissible under the Comparative Negligence Doctrine either on the issue of contributory negligence or in mitigation of damages); *Jeep Corp. v. Murray*, 101 Nev. 640, 708 P.2d 297 (1985) (trial court did not abuse its discretion in excluding evidence concerning nonuse of seat belts in a rollover case based on strict liability).

8. *Caiazzo v. Volkswagenwerk A.G.*, 647 F.2d 241 (2d Cir. 1981) (failure to wear seat belts should be considered by the jury only in assessing damages).

9. *See, e.g.*, *Smith v. Goodyear Tire & Rubber Co.*, 600 F. Supp. 1561 (D. Vt. 1985).

both crashworthiness and non-crashworthiness cases. The Supreme Court of Wisconsin has adopted an explicit set of rules for handling cases in which the seat belt defense is raised.¹⁰ Courts which have allowed the seat belt defense in ordinary negligence cases have applied the same principles in crashworthiness cases.¹¹ In six states where the seat belt defense had not been recognized previously, seat belt evidence was held to be admissible in crashworthiness cases. No court which has directly confronted the issue of the admissibility of seat belt evidence in a crashworthiness case has refused to allow it. However, the courts which have ruled seat belt evidence admissible in crashworthiness cases have taken differing approaches to the use of that evidence.

The courts of New Jersey and Louisiana, neither of which had previously allowed the seat belt defense, did allow evidence of the installation and availability of seat belts in vehicles in crashworthiness cases for the purpose of determining whether the vehicle was crashworthy. In the New Jersey case, *Siren v. Behan*,¹² the plaintiff's decedent had been ejected and it was alleged that the ejection was due to a defectively designed door latch. The court recognized that there was no statutory or common law duty to wear a seat belt at the time the accident occurred, but it held the jury must be allowed to consider the existence and recommended usage of seat belts available in the vehicle when applying the risk-utility analysis to the design defect issue.¹³ In the Louisiana case, *McElroy v. Allstate Insurance Co.*,¹⁴ it was alleged that a design defect in a door allowed the plaintiff's decedent to be ejected. The defendant automobile manufacturer maintained that the overall design of the vehicle, which included all of its restraint devices, was such that no defect existed.¹⁵ The court upheld an instruction given by the trial court that the jury must consider the automobile as a whole in determining whether it was properly designed, taking into account all of the features designed for the purpose of keeping passengers inside the automobile in collisions. These

10. See *Foley v. City of West Allis*, 113 Wis. 2d 475, 335 N.W.2d 824 (1983).

11. See, e.g., *Insurance Co. of North America v. Pasakarnis*, 451 So. 2d 447 (Fla. 1984); *Seward v. Griffin*, 116 Ill. App. 3d 749, 452 N.E.2d 558 (1983).

12. 224 N.J. Super. 130, 539 A.2d 1244 (1988).

13. See *id.* at 136-38, 539 A.2d at 1247-48.

14. 420 So. 2d 214 (La. Ct. App. 1982).

15. *Id.* at 217.

design features included seat belts.¹⁶ The court held that, in this light, evidence of the existence of seat belts was properly before the jury.¹⁷

In *Wilson v. Volkswagen of America, Inc.*,¹⁸ a federal court, applying Virginia law, admitted evidence that the vehicle was equipped with seat belts for the purpose of determining whether the automobile was defectively designed.¹⁹ The jury was instructed that it must consider whether the automobile *as a whole* was defective and unreasonably dangerous.²⁰ Additionally, even though Virginia had a statute specifically providing that failure to use seat belts would not be deemed to be negligence, the court held that evidence of the plaintiff's nonuse of seat belts would be admitted for consideration by the jury in mitigation of plaintiff's damages.²¹ The court held that the statute, which was in derogation of the common law, was to be strictly construed, and that it did not on its face bar the introduction of seat belt evidence for the purpose of determining a defect or mitigating damages.²²

The courts of three states, Oregon, California, and Michigan, overruled contrary case law in admitting seat belt evidence, both on the issue of defect and to show comparative fault on the part of the plaintiff. In *Dahl v. BMW*,²³ the Oregon Supreme Court criticized an earlier case which had held there was no common law duty to wear seat belts. Prior to *Dahl*, the Oregon Legislature had enacted a comparative fault statute which the *Dahl* court used as authority in allowing the seat belt defense.²⁴ Under the principles of comparative fault, the court held that the fact finder must determine whether the plaintiff's conduct was reasonable under the circumstances and the failure to use a seat belt could be considered in determining the

16. *Id.*

17. *Id.*

18. 445 F. Supp. 1368 (E.D. Va. 1978).

19. *Id.* at 1371.

20. *Id.* (citing *Melia v. Ford Motor Co.*, 534 F.2d 795, 800 (8th Cir. 1976))(emphasis in original).

21. *Id.* at 1374. The Virginia statute provides that "[f]ailure to use such safety lap belts or a combination of lap belts and shoulder straps or harnesses after installation shall not deemed to be negligence. . . ." VA. CODE ANN. § 46.1-309.1(b) (1988).

22. *Wilson*, 445 F. Supp. at 1374.

23. 304 Or. 558, 748 P.2d 77 (1987).

24. *Id.* at 568, 748 P.2d at 83.

reasonableness of the plaintiff's actions.²⁵

Similarly, the Supreme Court of California in *Daly v. General Motors Corp.*,²⁶ held that in future cases California would apply the doctrine of comparative fault to strict liability actions, and a plaintiff's own fault would be compared with that of the product manufacturer.²⁷ In considering the seat belt defense issue, the court held that the plaintiff's own conduct relative to the product could be determined to be comparative fault by the jury.²⁸ Regarding the evidence of the availability of seat belts in the vehicle, the court concluded that the jury, in considering the design defect issue, must determine whether the vehicle's overall design, including safety features provided in the vehicle, made it crashworthy.²⁹ Because the *Daly* court adopted comparative fault prospectively, the trial court's decision to submit the seat belt defense to the jury was reversed.³⁰ However, the comparative fault principles and seat belt issues would apply in the re-trial of the case.³¹

The Supreme Court of Michigan announced a similar holding in *Lowe v. Estate Motors Ltd.*,³² overruling contrary case law and allowing seat belt evidence on the issue of defect and to show comparative fault on the part of the plaintiff.³³

The trend is apparent. In accordance with this country's increasing awareness of the effectiveness of seat belts in preventing injuries in automobile accidents and the trend toward requiring seat belt use, more and more courts are requiring plaintiffs to bear the burden of their failure to take the simple precaution of fastening their seat belts. Especially in crashworthiness cases, where the plaintiff is alleging that the automobile manufacturer failed to design its vehicle to be safe in collisions, the courts are recognizing that manufacturers

25. *Id.*

26. 20 Cal. 3d 725, 575 P.2d 1162, 144 Cal. Rptr. 380 (1978).

27. *Id.* at 742-43, 575 P.2d at 1172-73, 144 Cal. Rptr. at 390-91. California's legislature enacted a pure comparative fault statute. This type of comparative fault statute allows a plaintiff to recover the percentage of damages for which he was not at fault or has accounted for in some other way. See *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 532 P.2d 1226, 113 Cal. Rptr. 858 (1975).

28. *Daly*, 20 Cal. 3d at 742, 575 P.2d at 1172, 144 Cal. Rptr. at 390.

29. See *id.* at 746, 575 P.2d at 1174-75, 144 Cal. Rptr. at 392-93.

30. *Id.* at 745-46, 575 P.2d at 1173-74, 144 Cal. Rptr. at 392-93.

31. *Id.* at 744, 575 P.2d at 1173, 144 Cal. Rptr. at 391.

32. 428 Mich. 439, 410 N.W.2d 706 (1987).

33. *Id.* at 475-76, 410 N.W.2d at 721.

must receive the benefit of their incorporation of seat belts as an integral part of the safety features in the vehicle.

II. MINNESOTA'S SEAT BELT EVIDENCE GAG RULE SHOULD NOT APPLY IN CRASHWORTHINESS CASES

A. *The Seat Belt Evidence Gag Rule Does Not Exclude Evidence of the Installation and Availability of Seat Belts in Crashworthiness Cases*

Minnesota Statutes section 169.685, subdivision 4 provides as follows: "Proof of the use or failure to use seat belts . . . shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle."³⁴ The statute does not on its face exclude evidence that seat belts were available and usable in the vehicle. It also does not specifically state that it applies to litigation involving personal injuries allegedly resulting from the design of the crash protection or occupant retention systems of a vehicle.

The statute should not be given any broader scope than its own wording justifies.³⁵ Strict construction is as appropriate with the Minnesota statute as it was with the Virginia statute in *Wilson v. Volkswagen of America, Inc.*³⁶ The statute in *Wilson* provided that failure to use a seat belt would not be deemed negligence.³⁷ The plaintiffs argued that the statute should preclude all evidence regarding seat belts, including evidence that there were seat belts in the vehicle. The court rejected that argument, holding that seat belt evidence would be admissible both on the issue of defect and the issue of mitigation of damages.³⁸ The court stated:

34. MINN. STAT. § 169.685, subd. 4 (1988).

35. See MINN. STAT. § 645.16 (1988) (stating that unambiguous statutes are to be strictly construed to their literal meaning); see also *McCaleb v. Jackson*, 307 Minn. 15, 18, 239 N.W.2d 187, 189 (1976) (where language of a statute clearly establishes statutory meaning, further statutory construction is not allowed); *State v. Theo. Hamm Brewing Co.*, 247 Minn. 486, 497, 78 N.W.2d 664, 670 (1956) (where statutory language is plain, simple, and unambiguous courts are required to follow clear statutory directions); *Lahr v. City of St. Cloud*, 246 Minn. 489, 494 n.10, 76 N.W.2d 119, 122 n.9 (1956) (the "plain meaning rule" still prevails in Minnesota); *State ex rel. Bergin v. Washburn*, 224 Minn. 269, 274, 28 N.W.2d 652, 655 (1947) (statutory interpretation is not permitted where language is clear).

36. *Wilson*, 445 F. Supp. 1368, 1374 (E.D. Va. 1978).

37. See VA. CODE ANN. § 46.1-309.1(6) (1988).

38. *Wilson*, 445 F. Supp. at 1374.

The reasonableness or unreasonableness of a person's actions with respect to any issue is generally a factual question and at common law would be decided by the trier of fact. As a statute written in derogation of the common law is to be strictly construed, . . . the Court will not extend the statute in question beyond its clear meaning.³⁹

The Minnesota statute clearly indicates that it is to apply only in cases involving personal injuries resulting from the use or operation of a motor vehicle.⁴⁰ The statute does not address cases involving injuries allegedly resulting from the design of a vehicle's crash protection systems.⁴¹ The statute's language only bars the admissibility of use or failure to use a seat belt. It does not bar evidence of the manufacturer's inclusion of seat belts in the design of the vehicle nor their availability at the time of the accident. The statute should be given only its literal meaning, and nothing more.

B. The Policy Reasons Which Were the Basis for the Adoption of the Seat Belt Evidence Gag Rule No Longer Exist, Especially in Crashworthiness Cases

In 1963, when Minnesota Statutes section 169.685 was enacted, the importance of seat belts in automobiles was only beginning to be perceived. For the first time, the effectiveness of seat belts in preventing injury was thought to be important enough that people should at least be given the option of wearing seat belts by requiring that they be installed in vehicles. However, at that time, the Minnesota Legislature did not impose any requirement that seat belts be worn. That has now changed with the enactment of Minnesota's mandatory seat belt law.⁴²

Minnesota courts have never addressed the seat belt defense because of the existence of the seat belt evidence gag rule. Courts in other jurisdictions which have refused to allow the seat belt defense have relied on several different reasons for their refusal, some of which were undoubtedly reasons for Minnesota's adoption of the gag rule. Those reasons included the lack of a duty to wear a seat belt, uncertainty as to the effec-

39. *Id.* (citation omitted).

40. See MINN. STAT. § 169.685, subd. 4 (1988).

41. See *id.*

42. MINN. STAT. § 169.686 (1988).

tiveness of seat belts, and the perceived potential for jury confusion.⁴³ Seat belts have now been available in cars for two decades and the reasons for refusing to accept the seat belt defense no longer exist.

1. *The Duty to Wear a Seat Belt is Now Widely Recognized*

As was noted earlier, none of the cases in other jurisdictions which refused to find a duty to wear a seat belt involved the issue of crashworthiness. Instead, they were automobile negligence cases in which defendant drivers asserted a seat belt defense against unbelted plaintiffs. Several courts held that the plaintiff had no common law duty to protect himself from the defendant's negligence by wearing a seat belt. Under the principle of contributory negligence, which totally bars recovery if the plaintiff was at all negligent, it was considered unjust to bar a plaintiff's recovery against a negligent defendant solely because the plaintiff was not wearing a seat belt. An increasing number of courts have reconsidered these holdings, especially in crashworthiness cases in jurisdictions which have adopted comparative fault. Thirty-two state legislatures have now established a duty to wear seat belts by enacting mandatory seat belt laws.⁴⁴

In *Lowe v. Estate Motors Ltd.*,⁴⁵ the Michigan Supreme Court overruled an earlier case called *Romankewiz v. Black*.⁴⁶ The court in *Romankewiz* had found no duty to wear a seat belt because the statute requiring automobiles to be equipped with seat belts "impose[d] no sanctions for failure to use a seat belt."⁴⁷ The *Romankewiz* court also noted that statistics demonstrated that only 15 percent of drivers wore their seat belts and that seat belts actually exacerbated injuries.⁴⁸ The court further reasoned that there was no duty to wear a seat belt because one is not required to anticipate that the negligence of

43. See *Hearings Before the Senate Transportation Committee* (March 4, 16, 28, 1983); *Hearings Before the House Transportation Committee* (March 9, 1983); *Hearings Before the House Highway Safety Subcommittee* (March 1, 7, 1983) (tapes on file at the Legislative Reference Library).

44. *Status Report*, 22 INS. INST. FOR HWY. SAFETY 4 (Dec. 5, 1987). See also *infra* Seat Belt Chart.

45. 428 Mich. 439, 410 N.W.2d 706 (1987).

46. 16 Mich. App. 119, 167 N.W.2d 606 (1969).

47. *Id.* at 124, 167 N.W.2d at 609 (emphasis in original).

48. *Id.*

another would cause an accident.⁴⁹

In overruling *Romankewiz*, the *Lowe* court noted the majority view in comparative negligence jurisdictions that juries were allowed to consider the seat belt nonuse defense.⁵⁰ The court in *Lowe* was no longer impressed with the fact that there was no statutory requirement to wear belts, “[n]oting that tort law is peculiarly nonstatutory and that the court had not hesitated in the past in overturning unsound precedent in the area of tort law.”⁵¹ Regarding the contention that the effectiveness of seat belts was too speculative, the *Lowe* court stated that “the evidence of seat belt effectiveness ‘in reducing deaths and injury severity was substantial and unequivocal.’”⁵² The *Lowe* court then cited the crashworthiness doctrine which expressly acknowledges that automobile collisions are foreseeable.⁵³ Further, the court recognized that under the law of comparative negligence, every person has an obligation to exercise reasonable care for his own safety. In contrast to the old contributory negligence rule, comparative negligence does not allow a negligent defendant to entirely avoid liability. Summing up its reasons for overruling *Romankewiz*, the *Lowe* court stated:

It cannot be seriously contended that automobile passengers are under no obligation whatsoever to exercise due care for their own safety because accidents are unforeseeable. The speciousness of such a contention is particularly reflected in the present case in which one of plaintiff’s theories of liability is indeed premised upon the foreseeability of automobile accidents.⁵⁴

These same reasons were cited as the basis for the holdings that wearing a seat belt is an element of the duty to exercise reasonable care for one’s own safety in *Dahl v. BMW*,⁵⁵ *Wilson*

49. *Id.* at 125, 167 N.W.2d at 610 (quoting *Miller v. Miller*, 273 N.C. 228, 233–34, 160 S.E.2d 65, 70 (1968)).

50. 428 Mich. at 451–55, 410 N.W.2d at 711–12.

51. *Id.* at 452–53, 410 N.W.2d at 711 (quoting *Insurance Co. of North America v. Pasakarnis*, 451 So. 2d 447, 451 (Fla. 1984)).

52. *Id.* at 453, 410 N.W.2d at 711–12 (agreeing with and quoting *Pasakarnis*, 451 So. 2d at 453).

53. *Id.* at 453, 410 N.W.2d at 712 (citing *Pasakarnis*, 451 So. 2d at 453).

54. *Id.* at 460, 410 N.W.2d at 715.

55. 304 Or. 558, 564–65, 748 P.2d 77, 81 (1987)(plaintiffs must still act reasonably to take care of themselves or be subject to defendants’ charge of failure to avoid or reduce injuries).

v. Volkswagen,⁵⁶ *Bentzler v. Braun*,⁵⁷ and *Insurance Co. of North America v. Pasakarnis*.⁵⁸

2. *The Effectiveness of Seat Belts in Preventing Injuries is Now Recognized*

There is an ever-increasing trend in the United States toward recognizing and understanding the importance of using seat belts. In June 1983, research conducted by the National Highway Traffic Safety Administration (NHTSA) revealed that 69.6% of the people in the United States had seen or heard advertisements concerning the importance of using safety belts.⁵⁹ In the Progress and Assessment Report of the National Safety Belt Usage Program, the NHTSA discussed in detail the growth of awareness and interest in the use and effectiveness of safety belts and child safety seats.⁶⁰ This report reflects a marked increase in knowledge, attitude, awareness, and self-reported use. National Safety Belt Surveys, taken in 1981 and 1983, have indicated that self-reported use of safety belts, though still not a majority, increased from about 24% to about 33%.⁶¹ "The increase is an indication of improving public attitudes regarding belt use."⁶²

In 1964, front seat lap belts were installed in all cars as standard equipment, but only fourteen states required them.⁶³ Now, however, virtually every state requires seat belts as standard equipment.⁶⁴ By 1983, at least twenty-five states had introduced mandatory seat belt legislation, and presently thirty-two states and the District of Columbia have enacted mandatory seat belt use laws.⁶⁵ All mandatory use statutes

56. 445 F. Supp. 1368, 1373 (E.D. Va. 1978)(seat belts afford plaintiff opportunity to mitigate his damages).

57. 34 Wis. 2d 362, 384-85, 149 N.W.2d 626, 639 (1967)(duty to use available seat belts is based on common law standard of ordinary care independent of statutory mandate).

58. 451 So. 2d 447, 454 (Fla. 1984)(nonuse of seat belts may amount to failure to use reasonable care on part of plaintiff).

59. NATIONAL SAFETY BELT USAGE PROGRAM, NATL. HWY. TRAFFIC SAFETY ADMIN., PROGRESS AND ASSESSMENT REPORT ii (Sept. 1983) [hereinafter NHTSA Report].

60. See generally *id.*

61. *Id.* at ii.

62. *Id.*

63. Warner, *Bags, Buckles and Belts: The Debate over Mandatory Passive Restraints in Automobiles*, 8 J. HEALTH POL. POL'Y AND LAW, 44, 47 (1983)(footnote omitted).

64. See *id.* at 47-48.

65. *Id.*

originally included, or have been amended to include, an accompanying fine.⁶⁶

It can no longer be seriously disputed that seat belts are a highly effective means of reducing injuries and deaths in traffic accidents. The latest accident data, as acquired through the NHTSA, indicates that the reduction in traffic fatalities between 1980 and 1982 was approximately 14%.⁶⁷ "The decline began in early 1981 and continued through the beginning of 1982."⁶⁸ This decline correlates with the increased awareness and use of seat belts by the general public. "The reasons for increased use reflect the increased public awareness of the positive value of safety belts."⁶⁹ Past cases which refused to allow a seat belt defense because the effectiveness of seat belts was unknown can no longer be considered valid authority.

3. *The Seat Belt Defense Need Not Confuse a Jury*

Another concern of some courts in refusing to allow the seat belt defense was that it would create jury confusion. It was believed that juries would be unable to deal with the apportionment of fault between the negligence of the tortfeasor who caused the accident and the negligence of the injured plaintiff who failed to wear a seat belt. This concern is no longer valid. This type of apportionment is exactly what juries do in crashworthiness cases. Juries across the country have been successfully apportioning fault for many years. In any crashworthiness case, the jury must apportion the fault between the tortfeasor who caused the accident and the manufacturer of a vehicle which is claimed to have caused enhanced injuries.⁷⁰ Adding apportionment for injuries caused by failure to wear a seat belt does not make the determination any more complicated.

For example, the Wisconsin courts have shown that this kind of apportionment is not a problem in applying the seat belt defense under specific procedures established in *Foley v. City of West Allis*.⁷¹ These procedures involve a five step approach by

66. See *infra* Seat Belt Chart.

67. NHTSA Report at 44.

68. *Id.*

69. *Id.* at 45.

70. See generally MINN. STAT. § 604.01 (1988).

71. 113 Wis. 2d 475, 335 N.W.2d 824 (1983).

which the allocation of fault process is laid out.⁷²

Additionally, the Minnesota Legislature has shown its confidence in jurors' ability to deal with complex damages issues by enacting the motorcycle helmet law.⁷³ The helmet statute states, in pertinent part:

In an action to recover damages for negligence resulting in any head injury . . . evidence of whether or not the injured person was wearing protective headgear . . . shall be admissible only with respect to the question of damages for head injuries. Damages for head injuries of any person who was not wearing protective headgear shall be reduced to the extent that those injuries could have been avoided by wearing protective headgear. . . .⁷⁴

It has never been suggested that juries are not capable of considering the damages issues in motorcycle helmet cases. Likewise, juries are capable of handling the analogous apportionment of damages in seat belt defense cases.

The policy reasons used by courts in refusing to allow the seat belt defense, some of which were certainly of concern to the Minnesota Legislature when it adopted the seat belt evidence gag rule, have now become obsolete and have no place in comparative fault jurisdictions, or in crashworthiness cases. There is now conclusive evidence that seat belts are an effective means of preventing injuries. The crashworthiness doctrine holds that automobile accidents are foreseeable to automobile manufacturers. It cannot be disputed, then, that accidents are also foreseeable to drivers. Thus, wearing a seat belt is a natural part of an individual's duty to exercise care for his own safety.

72. *Id.* at 490, 335 N.W.2d at 831. The five steps involved are as follows:

(1) Determine the causal negligence of each party as to the collision of the two cars; . . . (2) apply comparative negligence principles to eliminate from liability a defendant whose negligence causing the collision is less than the contributory negligence of a plaintiff causing the collision; . . . (3) using the trier of fact's calculation of the damages, reduce the amount of each plaintiff's damages from the liable defendant by the percentage of negligence attributed to the plaintiff for causing the collision; . . . (4) *determine whether the plaintiff's failure to use an available seat belt was negligence and a cause of injury, and if so what percentage of the total negligence causing the injury was due to the failure to wear the seat belt*; . . . (5) *reduce the plaintiff's damages calculated in step (3) by the percentage of negligence attributed to the plaintiff under step (4) for failure to wear an available seat belt for causing the injury.*

Id. (emphasis added).

73. MINN. STAT. § 169.974 (1988).

74. *Id.* subd. 6.

C. In Crashworthiness Cases, the Jury Must Consider the Design of the Vehicle as a Whole

The legal standard in Minnesota for determining whether a design defect exists is whether the manufacturer has met its duty to use reasonable care when designing its product.⁷⁵ This standard necessarily entails examination of a product in its entirety. Minnesota law does not suggest that a jury should be asked to consider some components of a vehicle to the exclusion of others. The only Minnesota case in which the plaintiff argued that evidence of an available safety device should be excluded was *Buzzell v. Bliss*, a product liability action.⁷⁶ The Minnesota Court of Appeals held that use of the safety device could have prevented the accident, and evidence of the availability of the safety device, as well as its nonuse, was properly admitted by the trial court.⁷⁷

Minnesota's approach is in accord with cases in other jurisdictions which have considered this issue specifically in the context of the admissibility of seat belt evidence in crashworthiness cases. In California's *Daly* case, the plaintiffs challenged a jury instruction which had been given by the trial court directing that "[i]n determining whether or not the vehicle was defective you should consider all of the equipment on the vehicle including any features intended for the safety of the driver."⁷⁸ Plaintiffs urged that only the precise malfunctioning component itself should be considered in determining whether the injury was caused by a defectively designed product. The *Daly* court rejected that argument, concluding that the issue of defective design is to be determined with respect to the product as a whole. The court stated:

The jury could properly determine whether the Opel's overall design, including safety features provided in the vehicle, made it "crashworthy," thus rendering the vehicle nondefective. Product designs do not evolve in a vacuum, but must reflect the realities of the market place, kitchen, highway, and shop. Similarly, a product's components are

75. See MINN. JURY INSTRUCTION GUIDE, CIVIL 3D JIG 117 at 81 (1986); see also *Bilotta v. Kelley Co.*, 346 N.W.2d 616 (Minn. 1984).

76. 358 N.W.2d 695 (Minn. Ct. App. 1984)(case involved a product liability action brought by injured employee against manufacturer of machine and manufacturer of safety device installed on machine).

77. *Id.* at 700.

78. 575 P.2d at 1174.

not developed in isolation, but as part of an integrated and interrelated whole.⁷⁹

In a crashworthiness case, the claim is that the manufacturer failed to use reasonable care in designing its crash protection or occupant retention systems to prevent injuries in collisions. The seat belt is an integral and crucial part of any vehicle's crash protection and occupant restraint systems. A jury cannot give meaningful consideration to the adequacy of the design of these systems without considering the seat belts.

This specific issue was articulately discussed by the Supreme Court of Michigan in *Lowe v. Estate Motors, Ltd.* The court stated:

Evidence of the seat-restraint system goes to the heart of the issue in crashworthiness cases in which the plaintiff's injuries were sustained after being ejected from the vehicle, a result which seat belts are specifically designed to prevent. . . . [T]he determinative issue of liability concerns whether the vehicle was unreasonably unsafe because of its design. Evidence of product safety features specifically designed to prevent the injuries complained of is entirely relevant to this issue. No reason, even arguably sound, exists for excluding such evidence on this liability issue. Plaintiff has provided us with none. In crashworthiness cases, the vehicle is to be considered as an integrated whole. Accordingly, seat belt evidence is admissible for that purpose. In the event that this cause proceeds to trial, the jury should be permitted to consider evidence concerning the seat-restraint system, along with all other relevant factors, in determining whether the vehicle was defective in design pursuant to plaintiff's crashworthiness theory.⁸⁰

Even in Louisiana, where failure to wear a seat belt has been held not to constitute contributory negligence, the Louisiana Court of Appeals in *McElroy v. Allstate Insurance Co.*, held that evidence of the existence of the vehicle's seat belt system was admissible in a crashworthiness case.⁸¹ The trial judge had allowed Ford Motor Company to introduce evidence that the automobile was equipped with a seat belt and that plaintiff was not wearing it at the time of the accident.⁸² The jury was in-

79. *Id.* at 1175.

80. 428 Mich. 439, 471-72, 410 N.W.2d 706, 720 (1987).

81. 420 So. 2d 214, 217 (La. Ct. App. 1982).

82. *Id.* at 216.

structed that it must consider the automobile as a whole, taking into account all the features designed in the automobile for the purpose of keeping passengers inside the car in the event of a collision.⁸³ Plaintiffs argued that, since failure to wear a seat belt could not be contributory negligence, Ford was trying to do what it would not otherwise be allowed to do in introducing the seat belt evidence.⁸⁴ The appellate court disagreed and upheld the jury instructions and the admission of the seat belt evidence. The court concluded:

Ford's defense to the allegations of design defect was that the vehicle was designed as safely as possible. Ford maintains that the design of the vehicle as a whole, including all of the restraint devices, was such that no defect existed. In this light, evidence of the existence of seat belts was properly before the jury.⁸⁵

D. The Seat Belt Evidence Gag Rule Violates Due Process When Applied to Vehicle Manufacturers in Crashworthiness Cases

The fourteenth amendment to the United States Constitution provides that the states may not deprive any person of property without due process of law.⁸⁶ It was long ago established that a corporation has a right to this protection.⁸⁷ Article I, Section 7, of the Minnesota Constitution contains a similar due process clause,⁸⁸ and Article I, Section 8, of the Minnesota Constitution entitles every person "to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."⁸⁹

Application of the seat belt evidence gag rule to a vehicle manufacturer in a crashworthiness case, which denies the manufacturer the right to present evidence that it designed its vehicle with a simple and highly effective means of occupant restraint which the plaintiff failed to use, is a denial of due process.

In *Juster Bros., Inc. v. Christgau*,⁹⁰ the Minnesota Supreme

83. *Id.* at 216-17.

84. *Id.* at 217.

85. *Id.*

86. U.S. CONST. amend. XIV.

87. *Chicago, M. & St. P. Ry. v. Minnesota*, 134 U.S. 418, 457 (1890).

88. MINN. CONST. art. I, § 7.

89. *Id.* at § 8.

90. 214 Minn. 108, 7 N.W.2d 501 (1943).

Court was confronted with an administrative regulation enacted pursuant to legislative authority which allowed a state commission to make a binding determination of an employer's social security contribution rate without affording the employer an opportunity to be heard and to show the actual facts bearing upon the rate. The employer, a corporation, sought to have the administrative rule declared unconstitutional as violative of its constitutional rights. The Minnesota Supreme Court struck down the rule, holding that the rule did deprive the employer of due process by effectively precluding the employer from presenting evidence.⁹¹ The court stated, "Even the legislature itself does not have the power to declare what should be conclusive evidence contrary to the fact."⁹²

The seat belt evidence gag rule, which denies the automobile manufacturer the right to defend itself by demonstrating that it has indeed considered the importance of occupant restraint and designed an occupant restraint system of which the seat belt is an integral part, effectively denies the manufacturer its day in court. Therefore, the seat belt evidence gag rule is contrary to the holding of the Minnesota Supreme Court in *Juster Bros.*:

The legislature cannot in this manner provide for the arbitrary exercise of power, so as to deprive a person of his day in court to vindicate his rights. And the law which closes his mouth absolutely when he comes into court is the same, in effect, as the law which deprives him of his day in court. . . .

The due process of law clauses of our state and federal constitutions are "standing guarantee[s] of substantial justice, and prevent such caprice or arbitrary action as would prevent a litigant from having a substantially fair trial. The requirement of due process means opportunity for a hearing, i.e., opportunity to be present during the taking of testimony or evidence, to know the nature and contents of all evidence adduced in the matter, and to present any relevant contentions and evidence the party may have. In other words, that the party have his 'day in court.' "⁹³

Later Minnesota cases have repeatedly emphasized the important due process right to present important and relevant

91. *Id.* at 117-20, 7 N.W.2d at 507-08.

92. *Id.* at 117, 7 N.W.2d at 507 (citations omitted).

93. *Id.* at 117-19, 7 N.W.2d at 507.

evidence. In *Yeager v. Chapman*,⁹⁴ the court stated that evidentiary rules must provide "a reasonable opportunity to present all pertinent and material evidence, without the imposition of burdensome restrictions. . . ."⁹⁵ Again, in *O'Neil v. Dux*,⁹⁶ the Minnesota Supreme Court stated:

Under both the state and Federal constitutions the defendant is guaranteed his day in court to defend any proceedings brought against him. These provisos for fair hearing assure to the litigant the right to be present when circumstances will permit, the right to place evidence in the record, and the right to receive reasonable and adequate notice of the same proceedings.⁹⁷

To apply the seat belt evidence gag rule in a crashworthiness case is to deny the manufacturer its day in court. The statute violates the requirements of due process of law as applied to vehicle manufacturers in crashworthiness cases in which it is alleged that injuries are a result of defective design of the vehicle's occupant restraint system.

E. The Seat Belt Evidence Gag Rule is in Conflict with Minnesota's Comparative Fault Statute

Minnesota Statutes section 604.01, subdivision 1, provides in pertinent part:

Contributory fault shall not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death or in injury to person or property, if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the person recovering.⁹⁸

Subdivision 1(a) then defines "fault" to include "acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability" and "misuse of a product and unreasonable failure to avoid an injury or to mitigate damages."⁹⁹

94. 233 Minn. 1, 45 N.W.2d 776 (1951).

95. *Id.* at 10, 45 N.W.2d at 782.

96. 257 Minn. 383, 101 N.W.2d 588 (1960).

97. *Id.* at 387, 101 N.W.2d at 592 (citation omitted).

98. MINN. STAT. § 604.01, subd. 1 (1988).

99. *Id.* at subd. 1(a).

Under the plain wording of this statute, an individual's failure to use reasonable care for his own safety and to avoid an injury by buckling up a seat belt clearly constitutes fault which must diminish the plaintiff's damages. The seat belt evidence gag rule is in direct conflict with the comparative fault statute. By precluding the introduction of evidence of nonuse of seat belts, the gag rule effectively precludes the determination of comparative fault on the part of the plaintiff which is required by the comparative fault statute.

The comparative fault statute requires the jury to compare all fault which contributed to cause the plaintiff's injuries.¹⁰⁰ If the seat belt evidence gag rule is applied in a crashworthiness case where the plaintiff was unbelted, the jury will be asked to do the impossible task of comparing all the fault which contributed to the plaintiff's injuries without being able to consider evidence on one essential element—the plaintiff's actions in failing to exercise reasonable care for his own safety by wearing a seat belt.

Not allowing the jury to consider the plaintiff's fault in failing to use an available and effective safety device also violates the principles of the crashworthiness doctrine. The crashworthiness doctrine requires the jury to determine all causes of the injuries sustained in an accident, not only the cause of the occurrence of the accident itself. Where the injuries were sustained because of impact with interior components of the vehicle or due to ejection, and it is claimed that the vehicle was not sufficiently designed to guard against interior impacts or ejection, the safety devices designed and placed into the vehicle for crash protection and occupant retention—most notably seat belts—and their use by the plaintiff are crucial elements in the jury's determination. The jury simply cannot do its job in a crashworthiness case, especially in a comparative fault jurisdiction, without being allowed to consider the manufacturer's installation of a simple and effective safety device in the vehicle and the plaintiff's failure to use it.

Neither the crashworthiness doctrine nor comparative fault existed at the time the gag rule was enacted in 1963. It must be assumed that the gag rule was intended only to apply in ordinary driver negligence cases, since that was the only type of case in existence at the time. The legislature simply could

100. *Id.* at subd. 1.

not have intended the gag rule to apply in a crashworthiness case—a concept which had never been considered at the time. Even if a negligent driver who causes an accident should not be entitled to a reduction of plaintiff's damages because plaintiff failed to wear his seat belt, the comparative fault statute requires that the seat belt defense be made available in a crashworthiness case to a vehicle manufacturer which has designed a safety feature into its vehicle which could have prevented the plaintiff's injuries if the plaintiff had used it.

F. Application of the Seat Belt Evidence Gag Rule in Crashworthiness Cases Will Cause Jury Confusion

The jury in a crashworthiness case hears evidence that the plaintiff's injuries were sustained by impact with interior components of the vehicle or objects outside the vehicle after the plaintiff was ejected. Plaintiff's experts invariably give opinions that the vehicle was defectively designed in that it did not provide adequate crash protection or occupant retention in collisions. With the "second collision" injuries being the central issue in the case, and in light of today's wide acceptance of seat belts and the general knowledge of their effectiveness in preventing ejection, the jury will expect to hear evidence on whether seat belts were available and used.

If the seat belt evidence gag rule is applied, the jury will wait in vain for the evidence it expects to hear. Since plaintiff was indeed thrown about in the car or ejected, the jury will certainly speculate that either plaintiff was not wearing a seat belt or the belt malfunctioned or was not available. The jury will have no evidence on the issue, so it will only be able to guess. The jury may very well apply its own seat belt defense, concluding that plaintiff was negligent in failing to wear a seat belt and reducing damages accordingly without any judicial guidance. On the other hand, the jury may speculate that seat belts were not available in the car or that they did not work, improperly holding this against the manufacturer on the determination of design defect.

Excluding evidence of nonuse of seat belts in a case where occupant restraint is the central issue makes no sense. This can result only in the jury's own application of a self-fashioned seat belt defense, without any limiting instruction or guidance

from the court. The jury cannot be expected to ignore such an obvious issue.

CONCLUSION

The seat belt evidence gag rule of Minnesota Statutes section 169.685, subdivision 4, is antiquated and out of step with today's knowledge of the effectiveness of seat belts. The wide acceptance of seat belts, the spreading recognition that there is a duty to wear seat belts, and the adoption of comparative fault have made the old gag rule a dinosaur.

Even if there were good policy reasons for continuing to apply the gag rule in ordinary automobile negligence cases, it has no place in crashworthiness cases. In a crashworthiness case where occupant restraint is the central issue, the jury must be allowed to consider the manufacturer's installation of seat belts as a primary means of occupant restraint, as well as a plaintiff's comparative fault in failing to use this simple and effective safety device which was available at the time of the accident.

STATE	STATUTE REQUIRING MANDATORY USE OF SEAT BELTS	ADMISSIBILITY OF SEAT BELT USE/ NONUSE IN CRASHWORTHINESS CASES	STATUTE PROHIBITING ADMISSIBILITY OF SEAT BELT USE/NONUSE
Illinois	Ill. Ann. Stat. ch. 95 1/2, para. 12-603.1 (Smith-Hurd Supp. 1988)	Admissible: Seward v. Griffin, 116 Ill. App. 3d 749, 452 N.E.2d 558 (1983) ²	Ill. Ann. Stat. ch. 95 1/2, para. 12- 603.1(c) (Smith-Hurd Supp. 1988)
Indiana	Ind. Code Ann. § 9-8-14-1 (Burns 1987)	Not Considered	Ind. Code Ann. § 9-18-14-5 (Burns 1987)
Iowa	Iowa Code Ann. § 321.445 (West Supp. 1988)	Not considered	Iowa Code Ann. § 321.445(4)(a) (West Supp. 1988) ³
Kansas	Kan. Stat. Ann. § 8-2503 (Supp. 1988)	Not Considered	Kan. Stat. Ann. § 8-2504(c) (Supp. 1988)
Kentucky	None	Not Considered	None
Louisiana	La. Rev. Stat. Ann. § 32:295.1 (West Supp. 1989)	Admissible: McElroy v. Allstate Ins. Co., 420 So.2d 214 (La. Ct. App. 1982)	La. Rev. Stat. Ann. § 32:295.1(E) (West Supp. 1989)
Maine	Me. Rev. Stat. Ann. tit. 29, § 1368-B-C (1988) (applies to children age 13 and under)	Not Considered	Me. Rev. Stat. Ann. tit. 29 § 1368-A (1978)
Maryland	Md. Transp. Code Ann. § 22-412.3 (Supp. 1986)	Not Considered	Md. Transp. Code Ann. § 22-412.3(g) (Supp. 1986)
Massachusetts	(Repealed as of 11/4/86)	Not Considered	None
Michigan	Mich. Comp. Laws Ann. § 257.710e(3) (West Supp. 1988)	Admissible: Lowe v. Estate Motors Ltd., 428 Mich. 439, 410 N.W.2d 706 (1987)	None
Minnesota	Minn. Stat. Ann. § 169.686 (West Supp. 1989)	Not Considered	Minn. Stat. Ann. § 169.685, subd. 4 (West 1986)
Mississippi	None	Not Considered	None
Missouri	Mo. Ann. Stat. § 307.178(2) (Vernon Supp. 1989)	Not Considered	Mo. Ann. Stat. § 307.178(3) (Vernon Supp. 1989) ⁴

²Evidence of plaintiffs seat belt use was admissible on issue of damages, but not on issue of liability. 452 N.E.2d at 569.

³Section 321.445(4)(a) provides that nonuse of a seat belt "is not admissible in a civil action brought for damages in a cause of action arising prior to July 1, 1986." Section 321.445(4)(b) provides that in causes of action arising after July 1, 1986, failure to wear a seat belt may be admitted to mitigate damages, but only under certain circumstances listed in the statute.

⁴Evidence of nonuse of seat belt may be admitted on issue of failure to mitigate damages under certain statutory conditions.

STATE	STATUTE REQUIRING MANDATORY USE OF SEAT BELTS	ADMISSIBILITY OF SEAT BELT USE/ NONUSE IN CRASHWORTHINESS CASES	STATUTE PROHIBITING ADMISSIBILITY OF SEAT BELT USE/NONUSE
Montana	Mont. Code Ann. § 61-13-103 (1987)	Not Considered	Mont. Code Ann. § 61-13-106 (1987)
Nebraska	(repealed by electorate 11/4/86)	Not Considered	None
Nevada	Nev. Rev. Stat. Ann. § 484.64(2) (Michie Supp. 1988)	Not Considered	Nev. Rev. Stat. Ann. § 484.64(1)(4) (Michie Supp. 1988)
New Hampshire	None	Not Considered	None
New Jersey	N.J. Stat. Ann. § 39:3-76.2f (West 1988)	Admissible: <i>Siren v. Behan</i> , 224 N.J. Super. 130, 539 A.2d 1244 (1988) ⁵	N.J. Stat. Ann. § 39:3-76.2a (West Supp. 1988) (child restraint only)
New Mexico	N.M. Stat. Ann. § 66-7-372(A) (1987)	Not Considered	N.M. Stat. Ann. § 66-7-373(B) (1988)
New York	N.Y. Veh. & Traf. Law § 1299-c (McKinney 1986)	Not Considered	N.Y. Veh. & Traf. Law § 1229-c(8) (McKinney (1986) ⁶)
North Carolina	N.C. Gen. Stat. § 20-135.2A (Supp. 1988)	Not Considered	N.C. Gen. Stat. § 20-135.2A(d) (Supp. 1988)
North Dakota	None	Not Considered	N.D. Cent. Code § 39-21-41.2 (1987) (child restraint only)
Ohio	Ohio Rev. Code Ann. § 4513.263(B) (Anderson Supp. 1988)	Not Considered	None
Oklahoma	Okla. Stat. Ann. tit. 47, § 12-417 (West Supp. 1989)	Not Considered	Okla. Stat. Ann. tit. 47, § 12-420 (West Supp. 1988)
Oregon	Or. Rev. Stat. § 483.490 (1987) (statute requires children to wear seat belts)	Admissible: <i>Dahl v. BMW</i> , 304 Or. 558, 748 P.2d 77 (1987)	Or. Rev. Stat. § 483.490(3) (1983) (child restraints only)
Pennsylvania	75 Pa. Cons. Stat. Ann. § 4581 (Purdon Supp. 1988)	Not Considered	75 Pa. Cons. Stat. Ann. § 4581(8) (Purdon Supp. 1988)

⁵Seat belt evidence admissible only on risk-utility issue. Failure to instruct jury on this limited use of seat belt evidence was reversible error.⁶Evidence of seat belt nonuse is admissible on issue of mitigation of damages, but only if non-compliance with the seat belt laws is pled as an affirmative defense.

STATE	STATUTE REQUIRING MANDATORY USE OF SEAT BELTS	ADMISSIBILITY OF SEAT BELT USE/ NONUSE IN CRASHWORTHINESS CASES	STATUTE PROHIBITING ADMISSIBILITY OF SEAT BELT USE/NONUSE
Rhode Island	None	Not Considered	None
South Carolina	None	Not Considered	None
South Dakota	None	Not Considered	None
Tennessee	Tenn. Code Ann. § 55-9-603 (19898) (repealed effective 6/30/90)	Not Considered	Tenn. Code Ann. § 55-9-604 (1989) (repealed effective 6/30/90)
Texas	Tex. Rev. Civ. Stat. Ann. art. 6701d, § 107c (vernon Supp. 1989)	Not Considered	Tex. Rev. Civ. Stat. Ann. art. 6701d, § 107B(i) (Vernon Supp. 1989)
Utah	Utah Code Ann. § 41-6-182 (1988)	Not Considered	Utah Code Ann. § 41-6-186 (1988)
Vermont	None	Not Considered	None
Virginia	Va. Code Ann. § 46.1-309.2 (Supp. 1988)	Admissible: Wilson v. Volkswagen, Inc., 445 F. Supp. 1368 (E.D. Va. 1978)	Va. Code Ann. § 46.1-309.2(E) (Supp. 1988)
Washington	Wash. Rev. Code Ann. § 46.61.688 (1987)	Not Considered	Wash. Rev. Code Ann. § 46.41.688(6) (1987)
West Virginia	None	Not Considerer	W. Va. Code § 17C-15046 (Supp. 1988) (child restraint only)
Wisconsin	Wis. Stat. § 347.48 (1988)	Admissible: Foley v. City of West Allis, 113 Wis. 2d 475, 335 N.W.2d 824 (1983)	None
Wyoming	None	Not Considered	Wyo. Stat. § 32-5-1304 (1988) (child restraint only)
Dist. of Columbia	D.C. Code Ann. § 40-1602 (1986)	Not Considered	D.C. Code Ann. § 40-1607 (1986)